

SPECIAL CIVIL APPLICATION No 6178 of 1998

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

2. To be referred to the Reporter or not? No @@

5. Whether it is to be circulated to the Civil Judge?  
No

MR. HIRALAL

Mr.N.D.Gohil, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/02/99

ORAL JUDGEMENT

1. The grievance of the petitioner in this writ petition, under Article 226 of the Constitution of India, is that despite the fact that his activities were not prejudicial for maintenance of public order he had been preventively detained under order dated 8.7.1998 passed by the Commissioner of Police, Ahmedabad City. He has prayed for quashing of the aforesaid order and has also prayed for immediate release from illegal detention.

2. Upon consideration of the grounds of detention and the Affidavit and Counter Affidavit it is clear that the petitioner is a bootlegger inasmuch as he is engaged in liquor business which is considered to be bootlegging activities within the meaning of Section 2(b) of the Prevention of Anti-social Activity Act (for short 'PASA'). However, registration of the two cases under the Bombay prohibition Act did not furnish material, what to say, of sufficient material to the detaining Authority to arrive at subjective satisfaction that the petitioner's activities on those two occasions were prejudicial for maintenance of public order.

3. The statements of two confidential witnesses, proceeded on similar lines like narration of parrot like story that on one occasion the witness was beaten because the petitioner suspected him to be police informer and on the other occasion the witness was beaten because he refused to keep stock of liquor, offered by the petitioner, in his house. Thus the two activities can hardly be said to be prejudicial for maintenance of public order inasmuch as these activities cannot be said to have disturbed even tempo of the life of any sections of the society or members of the community or locality in which these incidents took place. On such insufficient material the detaining Authority was hardly justified in arriving at subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. If this ingredient was not satisfied the impugned order of detention is automatically rendered illegal and invalid and the same requires to be quashed.

4. The result, therefore, is that the petition succeeds and is hereby allowed. The impugned order of detention dated 8th July 1998 is hereby quashed. The petitioner shall be released forthwith unless he is

wanted in some other case.

sd/-

Date : February 11, 1999 ( D. C. Srivastava, J. )

\*sas\*